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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,765

04/09/2004

Douglas H. Werner

PST-12302/36

1462

25006

7590

07/11/2006

GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C

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EXAMINER

LE, HOANGANH T

ART UNIT

PAPER NUMBER

2821

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/821,765

Applicant(s)

WERNER ET AL.

Examiner

HoangAnh T. Le

Art Unit

2821

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
HoangAnh Le  
Primary Examiner

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Applicant's communication filed May 24, 2006 has been carefully considered by the examiner. The arguments advanced therein are persuasive with respect to the rejections of record, and those rejections are accordingly withdrawn. In view of a further search, however, a new rejection is set forth below. This action is not made final.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites the limitation "the non-conducting surface" in line 1. There is insufficient antecedent basis for this limitation in the claim.

In claim 13, is "the electrically conductive layer" (claim 13) the same with "the conducting sheet" of claim 9?

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

Art Unit: 2821

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Jackson (the US Patent No. 6,885,345).

The Jackson reference teaches in figure 1 a reconfigurable frequency selective surface (FSS) comprising: a plurality of conducting patches 10 supported on a first surface of a dielectric material; and a plurality of switches 12, 14, each switch electrically interconnecting at least two of the plurality of conducting patches when the switch is selected, wherein a first ensemble of switches 12 is selectable so as to provide a first configuration of electrically interconnected conducting patches, a second ensemble of switches 14 is selectable so as to provide a second configuration of electrically interconnected conducting patches, and the FSS being part of an artificial conductor ground plane, the AMC further including the dielectric material and a conducting sheet on a second surface of the dielectric material (col. 5, lines 56-67, and col. 6, lines 1-25). The first configuration of electrically interconnected conducting patches provides a first resonance frequency and the second configuration of electrically interconnected conducting patches provides a second resonance frequency (col. 5, lines 57+). the first configuration of electrically interconnected conducting patches comprises a repeat unit cell pattern of electrically interconnected conducting patches (col. 5, lines 23+). The first configuration of electrically interconnected conducting patches comprises a two-dimensional array of unit cell patterns of electrically interconnected conducting patches (figure 1). The plurality of conducting patches are disposed in a square or rectangular

grid pattern on the first surface of the dielectric material (figure 1). Each conducting patch has a square or rectangular shape (figure 1). The plurality of conducting patches is arranged in a plurality of fractal arrays (col. 5, lines 23+). The FSS has a doubly periodic structure (col. 5, lines 23+). The artificial magnetic conductor is used as an electromagnetic reflector (col. 4, lines 40-45). The resonance frequency of the at least one region is independently adjustable (col. 7, lines 15+). The resonance frequency of the region is adjusted by modifying the dielectric constant of a tunable dielectric (col. 7, lines 32-40).

The recitations of the artificial magnetic conductor being used as an electromagnetic absorber or as a ground plane for an antenna are merely intended uses which fail to patentably distinguish the claims.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 26 and 29 provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 18 and 20 of copending Application No. 10/823,237. Although the conflicting claims are not identical, they are not patentably distinct from each other because the omission of an element and its function in a combination is an obvious expedient if the remaining elements perform the same function as before. In re Karlson 136 USPQ 184 (CCPA 1963). Claims 26 and 29 which eliminate elements ( a switch enabled by a magnetic field, a thermal field, or a vibration) and their function with the remaining elements functioning as before, is therefore merely an obvious variation of claims of the Application No. 10/823,237.

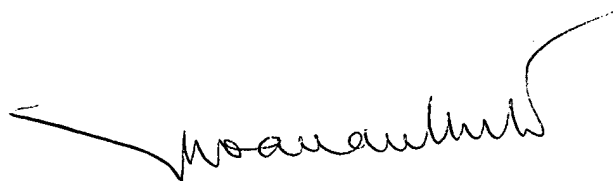
This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HoangAnh T. Le whose telephone number is (571) 272-1823. The examiner can normally be reached on 8:00am-4:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2821

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Hoanganh Le', with a long horizontal stroke extending to the left and a curved flourish at the end.

**Hoanganh Le**  
**Primary Examiner**